1944.

File No. O. Hoard Profit Prev-44

Legal Deptt

A BRANCH

Subject:— Opinions under the Hoarding & Profiteering Prevention Ordinance 1943

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File No. O Hoard Profit Prev/44

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4 c.
V.R.K.
9/7/56

Submitted.

The Nasik Distillery is a Govt. Concern, and is not working on a commercial basis and there is no profit and loss account to be presented to Govt. The Distillery sells liquor at a fixed price. The question for R.L.A's consideration is whether the Hoarding and Profiteering Pregention Ordinance, 1943 (XXXV of 1943) applies to the Government Distillery at Nasik. The Crown is not expressly or by necessary implication named in the Hoarding and Profiteering Prevention Ordinance, 1943, and consequently the Ordinance will have no application to the Govt. Distillery at Nasik. (see R.L.A.'s opinion No.7073, dated 23-10-43).

Id/- E.P.Bhamgara.
8/1

S.A.S.

The view taken by R.D. is correct. Papers may be seen and returned.

Id/- R.T.K.
8/1

A.L.R.

I agree. Govt. is manufacturer and it seems to me doubtful whether the ordinance xxx covers manufacturer's prices. The fact that Govt. sells direct to retail dealers might not render Govt a wholesale dealer.

Id/- R.S.H.
10/1

R.L.A.

Reply -

Papers seen and returned. The view taken by R.D. is correct.

Id/- P.N.M.
11/1/44

Office of the R. L. A.

Papers seen and returned. The view taken is correct.

Id/- PnN.M. 11/1/44

4 c.
V.R.K.
11th Jan. 1944
V.R. to R.D.
12 cont'd

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the Hoarding and Profiteering Prevention Ordinance, 1943, applies to excise shops where exisable articles are soldby the licensees under the Bombay Abkari Act, 1878.

2. The term "article" as defined in section 2(a) of the Hoarding and Profiteering Prevention Ordinance, 1943, includes any article or thing except food grains, which have not, by notification in the Official Gazette, been declared by the Central Government to be an article or thing to which this Oridinance does not apply. "Excisable article" as defined in section 3(15) of the Bombay Abkari Act, 1878 would therefore be an article to which the Hoarding and Profiteering Prevention Oridinance would apply unless it has been exempted by the Central Government by notification in the Official Gazette. It is true that Government exercises certain control over the excise shops, but it is not correct tosay that these shops can be considered as part and parcel of Government when the licensees with their present measure of independence though subject to conditions of the license are allowed to run their shops. The excise shops managed by the licensee cannot be considered as being on a par with the shops or concerns run by Government. The view taken by R.D. is not correct.

Sd/- P.N.M.
21/1

Remembrancer of Legal Affairs.

U.R. to R.D., No. 19Confl. dated the 21st January 1944.
4 c.
V.R.K.
9/7/56

Office of the R.L.A.

The burden of proving that the landed cost of the bale with an addition of 20 per cent. wasless than the price charged by the accused would be on the prosecution . The fact that the price charged by the accused was in excess of the landed cost of similar bales in August 1941 would be no valid ground to shift the burden of proof on the accused particularly when he himself was not the importer of the bale and has made no unreasonable profits in the transaction. The arguments advanced by the Police Prosecutor in his considered opinion at page 5 of the file are convincing. The prospects of a successful prosecution do not appear to be bright and consequently it is inadvisable to proceed with the prosecution on the material available.

O/C. Sd/-
8/5/44

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 208-Confl, dated the 9th May 1944.

4 c.
V.R.K.
9/7/56

Office of the R.L.A.

No action for breach of agreement would be legally feasible against Messrs. Dawoodbhoy Noorbhoy Chunia since there was no concluded agreement for want of acceptance of the offer of sale.

2. To constitute a breach of the Hoarding and Profiteering Prevention Ordinance it would be necessary to prove that Messrs. Dawoodbhoy Noorbhoy Choonia are(1) dealers and (2) sold the steam boiler for a price in excess of the amount represented by an addition of twenty per cent or the addition allowed by normal trade practice whichever is less to the cost landed of the article (see section 6(2) of the Ordinance). It is not known whether Messrs. Dawoodbhoy Noorbhoy Choonia are dealers within the meaning of section 2(b). Nor is it known what was the prime cost of the steam boiler and its cost of import. Since probably both the seller and purchaser would be colluding, it may not be possible to ascertain correctly the sale price of the steam boiler. The fact that Messrs. Dawoodbhoy NoorbhoyChoonia have disposed of the steam boiler to a private person instead of the Govt. even when the negotiations with Government for sale were pending and enquiries about the reasonable price of the steam boiler under the Hoarding and Profiteering Prevention Ordinance, 1943 were in progress appears to indicate that if at all the price at which the steam boiler was sold was unreasonable proper care must have been taken to see that no evidence in support of the same was forthcoming. In the circumstances there does not appear to be any proper case for police enquiry. The view taken by the Secretary, R.D. is correct.

Sd/- P.M.M.
1/6

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3946, dated the 2nd June 1944.

4 o.
V.R.K.
9/7/56

Office of the R.L.A.

The view taken by the Government of India is correct.

2. "where a particular intent or stateof mind is of the essence of an offence, the person committing the act is not criminally responsible if he had no mens rea and act was ordered or procured by another person; but the person who ordered or procured the act is criminally responsible.

In general a person is not criminally liable for an act or omission unless he has himself committed or omitted the act or authroised or shut his eyes to the commission or omission.

The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable. A master is not criminally liable merdy because his servant or agent commits a negligent or malicious or fraudulent act. But in the limited class of cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his orders "(Halsbury Vol. 9 pages 12,13)".

3. Since mens rea is not of the essence of the offence under the Hoarding and Profiteering Ordinance, the proprietor would be liable for the act of his servant and can be prosecuted as principal offender and his servant Adur Krishnarao as abettor for the breach of the provisions of the Hoarding and Profiteering Ordinance. This view is fully supported by the decision of the Bombay High Court in criminal Revision Application No. 241

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(Imperator V Durlabhdas Jivarj). Criminal Appeals No. 168 and 468 of 1943 cited at page 8 ante by the Additional Director of Civil Supplies have no application to the present case.

Sd/- P.N.M.
8/9/44

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No.6346, dated the 11th September 1944.

4 c.
V.R.K.
9/7/56

Office of the R.L.A.

The question raised for the consideration of the R.L.A. are:-

(1) Whether an Additional District Magistrate can exercise the powers of the District Magistrate empowered under section 14 of the Hoarding and Profiteering Prevention Ordinance, 1943, if not,

(2) whether an Additional District Magistrate is an officer not below the rank of a District Magistrate within the meaning of section 14 of the Hoarding and Profiteering Prevention Ordinance, 1943.

Section 14 of the Hoarding and Profiteering Prevention Ordinance provides that no prosecution for any offence punishable under this Ordinance shall be instituted except with the previous sanction of the Central or the Provincial Government or of an officer not below the rank of a District Magistrate empowered by the Central or the Provincial Government to grant such sanction. An order empowering a District Magistrate under section 14 is an executive order and not a statutory order. Consequently an Additional District Magistrate will not be entitled to exercise the powers of the District Magistrate empowered under section 14 (see Prabhulal Ramlal Vs. Emperor 1944 N.L. 44). An Additional District Magistrate is an inferor criminal court situate within the local limits of the jurisdiction of the District Magistrate (See section 10(3) of the Criminal Procedure Code). Consequently an Additional District Magistrate is not one "not below the rank of a District Magistrate" within the meaning of section 14 of the Hoarding and Profiteering Prevention Ordinance, 1943.

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It is impossible to hold that an Additional District Magistrate is not an officer lower in rank than a District Magistrate, since in every district in which there is an additional District Magistrate, there is also a District Magistrate.

Sd/-
P.N.M.
20/11/44

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No., 8134, dated the 20th November 1944.

4 c.
V.R.K.
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Office of the R.L.A.

It appears that W.A.Henderson (India) Ltd., Bombay advertised in March last in the "Illustrated Weekly of India" a boon for all civil and military officers serving in the remote places in India to get their requirements unobtainable at their stations at best market rates from Bombay" giving a guarantee to accept goods back if found unsatisfactory or high in price" and soon started "supply servive". On receipt of orders from customers they used to purchase through brokers articles in the Bombay market sometimes at controlled rates and sometimes at rates higher than the controlled rates and supply them to such customers at actual pruchase rates and charge them for service from 2½% to 5% on the total purchases. It is admitted that in the course of such transactions rates of the articles charged to their customers are above the controlled rates. The question for the consideration of the R.L.A. is whether W.A.Henderson (India) Ltd., can be prosecuted under the Hoarding the Profiteering Prevention Ordinance, 1943.

Under the Hoarding and Profiteering Prevention Ordinance, 1943 a dealer alone is liable to be prosecuted for the breach thereof. "Dealer" as defined in section 2(b) means a person carrying on the business of selling any article whether wholesale or retail. The main contention of W.A.Henderson (India) Ltd., as appears to be that they were doing that business as mere commission agents and not as dealers. "A commission agent is one who buys and sells goods in the market on behalf of his employers in his own name and ON THE BEST TERMS available. His position differs from that of the broker in the competency to contract with others conomine" (see Iyer's Law of Contracts, p.920). Consequently a commission agent is as much a "dealer" within the meaning of section 2(b) of the Ordinance as any other person who does the business of purchasing

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and selling any article. The fact that a commission agent cannot charge his customer more than his commission, that is to say, does not trade with a view to profit, does not appear to make any difference with respect to his position as dealer within the meaning of section 2(b) of the Ordinance Nor does the fact that a commission agent does not stock goods make him any the less a dealer. Although it is not possible to forecast the result of prosecution there appear to be good grounds for prosecuting W.A Henderson (India) ltd., for breach of the Ordinance.

Sd/- N.K.D.

for Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 8321, dated the 25th November 1944.

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